IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12456 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJKOT MUNICIPAL CORPORATION - Petitioner(s)

Versus

ANRUTLAL RAJASHI RUSIPANA - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 03/08/2005

ORAL JUDGMENT

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1. Though served none appeared on behalf of the respondent. Hence, the matter is taken up for final hearing today.

2. This petition is directed against the order dated 4th August, 2000 passed by the Labour Court, Rajkot in Recovery Application No. 684 of 1987, whereby the said application was allowed.

3. The short facts of the case are that the respondent passed the L.S.G.D. Examination on 30th August, 1972 at the time when he was in Sarela Pay Commission. On introduction of Desai Pay Scale, the pay scale of the respondent was fixed at Rs.530=00 and the respondent was paid arrears accordingly. It is the case of the petitioner that the respondent did not claim increment in the year 1972 and till he retired in the year 1983. It is further the case of the petitioner that the respondent after a lapse of 15 years under Section 33 (C) (2) of the Industrial Disputes Act, 1947 preferred a Recovery Application. Though there was no pre existing right to claim the increment, the Labour Court allowed the said application. Hence, this petition.

4. Mr. Clerk learned advocate for the petitioner has contended that the Labour Court has exceeded its jurisdiction under Section 33 (C) (2) of the Industrial Disputes Act, 1947 *inasmuch* as though there was no pre-

existing right in favour of the respondent, the Labour Court allowed the application. He has further contended that the respondent had retired on 31st December, 1983 and had preferred Recovery Application almost after a period of four years. Mr. Clerk has further contended that the respondent has not given any details in the application, as to how he is entitle for the amount in question.

5. I have heard the learned counsel for the petitioner and have perused the materials produced on record. While admitting the matter, this Court on 06/02/2001 had confirmed the ad-interim relief granted by this Court on 26/12/2000 and the same has not been implemented till date. Having perused the award, it transpires that though there was no pre-existing right in favour of the respondent, the Labour Court allowed the Reference. Apart from that the Labour Court has erred in ignoring the fact that the respondent had not made any demand for increment from the year 1972 to 1983 and had preferred an application only in the year 1987. Thus, on these grounds the impugned order passed by the Labour Court is required to be quashed and set aside.

6. For the foregoing reasons, the petition is

allowed. The order dated 4th August, 2000 passed by the Labour Court, Rajkot in Recovery Application No. 684 of 1987 is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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